

## REMARKS

Reconsideration of the above-identified patent application in view of the amendment above and the remarks below is respectfully requested.

No claims have been canceled or added in this paper. Claims 104, 106, 117, 164 and 168 have been amended in this paper. Therefore, claims 104-109, 111-112, 117 and 164-172 are pending and are under active consideration.

The drawings stand objected to “because they are informal hand drawings, which makes the lines and characters difficult to read, and could cause errors during printing.”

Without acquiescing in the propriety of the objection, Applicants are submitting herewith a set of formal drawings corresponding to the subject set of informal drawings. No amendments have been made to the originally-filed drawings. Accordingly, the subject objection has been obviated and should be withdrawn.

In the outstanding Office Action, the Patent Office states that “[t]he incorporation of essential material in the specification by reference to an unpublished U.S. application, foreign application (PCT/US00/17703) or patent (EP 819,726), or to a publication is improper.” The Patent Office then states that “Applicant is required to amend the disclosure to include the material incorporated by reference, if the material is relied upon to overcome any objection, rejection, or other requirement imposed by the Office.”

In response to the above, Applicants respectfully submit that the subject matter in question is not being relied upon to overcome any objection, rejection or other requirement imposed by the Patent Office. Applicants further submit that the subject matter in question merely represents “nonessential material,” as opposed to “essential material.” Therefore, Applicants respectfully

submit that no amendment of the disclosure is necessary at this time and respectfully traverse the requirement that the disclosure be amended to include the material incorporated by reference.

Also in the outstanding Office Action, the Patent Office states that “[t]he use of numerous trademarks has been noted throughout this application” and that “[t]rademarks should be capitalized whenever it appears and be accompanied by the generic terminology.”

In response to the above, Applicants have amended the specification to show trademarks in capital letters, accompanied by the generic terminology.

Claims 165 and 167 stand objected to “under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim.” In support of the objection, the Patent Office states the following:

Claim 165 recites that the adhesive layer has a thickness of “about 200 microns”, and claim 167 recites that the adhesive layer has a thickness of “about 80 microns.” In both cases this expands the range of their parent claims (164 and 166) to levels above their upper limits (200 microns, 80 microns), which includes values slightly above 80 and 200 microns.

Applicants respectfully traverse the subject objection. As best understood by Applicants, the Patent Office appears to be taking the position that (i) the recitation of “a thickness of about 200 microns” in claim 165 does not fall entirely within the scope of “a thickness of about 10 to 200 microns” in claim 164 and that the recitation of “a thickness of about 80 microns” in claim 167 does not fall entirely within the scope of “a thickness of about 20 to 80 microns” in claim 166. Applicants respectfully disagree. Despite the fact that the Patent Office does not explicitly explain why it believes that “about 200 microns” and “about 80 microns” represent an expansion of the upper limits of “about 10 to 200 microns” and “about 20 to 80 microns,” respectively, Applicants assume that the Patent Office is taking this position because the word “about” is not explicitly

recited before both the lower limits and the upper limits of the ranges of claims 164 and 166. In response, Applicants respectfully submit that a person of ordinary skill in the art, after having read the present specification, would have understood “about 10 to 200 microns” to mean “about 10 microns to about 200 microns” and would have understood “about 20 to 80 microns” to mean “about 20 microns to about 80 microns.” Applicants note that phrases of the genre “about [lower limit] to [upper limit] [units]” appear in many places throughout the present specification. Phraseology such as this is routinely used in the art to mean “about [lower limit] [units] to about [upper limit] [units].” The Patent Office has provided no explanation as to why a person of ordinary skill in the art, after having read the present specification, would have construed the phrases in claims 164 and 166 so that “about” is associated only with the lower limit of the range and not also with the upper limit of the range. Such a reading is also at odds with the fact that the recitation of units, namely, microns, is only recited once at the end of the phrase. Clearly, a person of ordinary skill in the art would have regarded the word “microns,” which follows the numerical range, as applying to both the lower limit and the upper limit in the same manner that the word “about,” which precedes the numerical range, applies to both the lower limit and the upper limit.

Accordingly, for at least the above reason, the subject objection should be withdrawn.

Claims 104-109, 111, 112, 117, 149, 150 and 157-163 stand rejected under 35 U.S.C. 112, first paragraph, “as failing to comply with the written description requirement.” In support of the rejection, the Patent Office states the following:

Claim 106 was amended on 2 June 2005 to include the limitation “not exceeding about 1 micron.” There is no support for the broader language of “about 1 micron.” Also, there is no support for the claim language of “not exceeding 1 micron,” only for the language “less than 1 micron.”

Claim 117 was amended on 2 June 2005 to include the limitation “wherein said ink design layer further comprises a design made using a non-crosslinked polyvinyl chloride ink. While there is support for making the ink design layer marking of claim 111 by thermal transfer printing, ink jet printing, and laser printing (page 35), and there is support for designs of non-crosslinked PVC ink (page 29), it is unclear where support exists for an ink design layer that comprises both of these features simultaneously. The description describes the above layers as being of different compositions, and they are present in separate embodiments. It is not clear where support is found for the narrower instant claim language.

Claims 164-172 were presented in the amendment filed 10 July 2009. Several issues are present.

Claim 165 recites that the heat-activatable adhesive has a thickness of about 200 microns. Although support exists in the specification to support the broad limitation of 10-200 micron thickness (page 20), there is no support for the narrower limitation of about 200 microns as instantly claimed.

Claim 167 contains new matter for the same reason of claim 165 above. Namely, although there is support (page 20) for broadly claiming that the adhesive layer may have a thickness of 20 to 80 microns, there is no support for the narrower limitation of about 80 microns as instantly claimed.

Claim 168 recites that the release coating is positioned “directly on top of” the carrier, however, the specification only provides for the broader limitation of “a release coating positioned over said carrier” (page 5).

Claims 171-172 recite further new limitations that do not find support in the specification. Applicant is invited to point out where in the specification each limitation finds support under 35 U.S.C. 112, first paragraph.

Applicants respectfully traverse the subject rejection. With respect to claim 106, without acquiescing in the propriety of the rejection, Applicants have amended the claim in the manner suggested by the Patent Office.

With respect to claim 117, Applicants disagree with the Patent Office's position and respectfully submit that the claim is supported at least by the embodiment of Fig. 17, which includes an ink layer comprising a conventional ink design 1423, a thermochromic ink design 1425, and a marking 1427. As disclosed in the present specification, for example, on page 43, lines 16-18, conventional ink design 1423 may be printed in the same manner and using the same types of inks as ink layer 325, which inks are said to include non-cross-linked PVC inks (see page 27, lines 12-14, and page 28, lines 18-25, of the present specification). In addition, as disclosed in the present specification, for example, on page 43, lines 27-29, marking 1427 may be printed in the same manner as marking 827, which marking may be made using thermal transfer printing, ink jet printing, or laser printing (see page 35, lines 17-19, of the present specification).

With respect to claim 165, Applicants respectfully disagree with the Patent Office's position that there is no support for the language "a thickness of about 200 microns." As explained above, Applicants respectfully submit that the disclosure of "a thickness of about 20 to 200 microns" would have been construed by a person of ordinary skill in the art, after having read the present specification, to mean "about 20 microns to about 200 microns."

With respect to claim 167, Applicants respectfully disagree with the Patent Office's position for the same types of reasons discussed above in connection with claim 165.

With respect to claim 168, Applicants respectfully disagree with the Patent Office's position that the specification only provides support for "a release coating positioned over said carrier" and does not provide support for a release coating positioned "directly on top of" the carrier. Applicants point out that, for example, on page 10, lines 1-2, there is disclosed a release coating applied "directly to the top of carrier 15." This language is also supported by several of the figures.

With respect to claim 171, Applicants respectfully disagree with the Patent Office's position that the specification does not provide support for the recited limitation. The present specification discloses, for example, on page 43 that label 1411 is similar in most respects to label 311 and discloses, for example, on page 26, lines 6-7, that "the footprint of ink design layer 325 does not exceed that of adhesive layer 323." This feature is also shown in Figs. 4 and 17. Therefore, Applicants respectfully submit that there is ample support for the claimed feature.

With respect to claim 172, Applicants respectfully disagree with the Patent Office's position that the specification does not provide support for the recited limitation. The present specification discloses, for example, on page 43, third full paragraph, that label 1411 includes an ink layer comprising a conventional ink design 1423, a thermochromic ink design 1425, and a marking 1427. Conventional ink design 1423 is said to be printed in the same manner and using the same types of inks as ink layer 325, which inks are said to include screen printed inks (see page 27, lines 24-26, of the present specification). Marking 1427 is said to be printed in the same manner and using the same inks as marking 827, which marking may be made using thermal transfer printing, ink jet printing, or laser printing (see page 35, lines 17-19, of the present specification).

Accordingly, for at least the above reasons, the subject rejection should be withdrawn.

Claim 117 stands rejected under 35 U.S.C. 112, second paragraph, "as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention." In support of the rejection, the Patent Office states the following:

Claim 117 recites that the ink design layer further comprises a design made "using" a non-cross-linked polyvinyl chloride ink. It is unclear what this entails. Is the word "using" being presented to denote a design that "includes" or "comprises" these polyvinyl chloride compounds? Or is "using" a term that is intended to encompass a product by process limitation (polyvinyl chloride is used

as an ingredient to form some other composition, which is added as an ink to the design)?

Without acquiescing in the propriety of the rejection, Applicants have amended claim 117 so that the word “using” is no longer recited. Accordingly, the rejection is moot and should be withdrawn.

Claims 104-106, 111, 112, 171 and 172 stand rejected under 35 U.S.C. 103(a) “as being unpatentable over USPN 5,296,444 to Saiki et al. in view of USPN 5,514,516 to Vanmaele.” In support of the rejection, the Patent Office states the following with respect to independent claim 104:

Regarding claim 104, Saiki teaches a heat-transfer label (heat-melt transfer medium, title, also depicted in Fig. 4) suitable for labeling fabric (cloth goods, column 1, lines 5-11). The heat-transfer label (Fig. 4) comprises a support portion (foundation 1) and a transfer portion (includes release layer 2, heat meltable ink layer 3, and adhesive layer 4). The transfer portion is positioned over said support portion for transfer of the transfer portion from the support portion to an article of fabric (see Fig. 5, after a master is created, the image may be transferred to fabric substrate 9). As above, the transfer portion comprises an ink design layer and a heat-activatable adhesive layer (the adhesive may be “activated” by being melted by heat, column 8, lines 3-8). The heat-activatable adhesive layer has a thickness of 0.2 to 3  $\mu\text{m}$  (column 8, lines 11-12). Because the surface roughness of the adhesive layer cannot possibly be greater than the total thickness of the adhesive layer, the claimed structure wherein the heat-activatable adhesive layer has a surface roughness not exceeding about 10 microns is deemed to be inherent.

The limitation “wherein said ink design layer is directly printed onto said heat-activatable adhesive layer” is a method limitation and does not determine the patentability of the product, unless the process produces unexpected results. The method of forming the product is not germane to the issue of patentability of the product itself, unless applicant presents evidence from which the examiner could reasonably conclude that the claimed product differs in kind from those of the prior art. See MPEP §2113. Furthermore, there does not appear to be a difference between the prior art structure and the structure resulting from the claimed method because

Saiki discloses (Fig. 4) that the ink layer is in contact with the adhesive layer, so this would be the same as being “printed” on.

Saiki does not teach that the ink design layer comprises a thermochromic ink design. Vanmaele teaches that for thermal dye sublimation transfers such as those of Saiki, the dye may be a thermochromic dye (column 3, lines 1-15).

The disclosures of Saiki and Vanmaele are analogous art, because each discusses dyes for thermal transfers. In particular, Saiki discusses thermal transfers for fabrics (column 1, lines 5-11), and Vanmaele teaches that the disclosed dyes are suitable for transfer printing on fabrics (column 23, lines 1-3). It is clear from these two disclosures that the instantly claimed invention would have been obvious to one of ordinary skill in the art at the time of invention by way of simple substitution of one known element for another to obtain predictable results (MPEP § 2143). This is in light of the finding that Saiki teaches a thermal transfer that differs from that claimed only by substitution of the thermochromic dye of Vanmaele. One of ordinary skill in the art could have substituted the thermochromic dye of Vanmaele for the dye of Saiki, and the result would have been predictable, because both disclosures are directed to the same thing (thermal transfers), and Vanmaele discloses that the dyes may be used for fabrics.

Applicants respectfully traverse the subject rejection. Claim 104, from which claims 105-106, 111-112 and 171-172 depend, has been amended in this paper and now recites “[a] heat-transfer label suitable for labeling fabric comprising:

(a) a support portion, wherein said support portion comprises a carrier and a release, said release being positioned over said carrier; and

(b) a transfer portion, said transfer portion being positioned over said support portion for transfer of the transfer portion from the support portion to an article of fabric under conditions of heat and pressure, said transfer portion comprising

(i) an ink design layer, said ink design layer comprising a thermochromic ink design; and



(ii) a heat-activatable adhesive layer, said heat-activatable adhesive layer having a surface roughness not exceeding about 10 microns;

(iii) wherein said ink design layer is printed directly onto said heat-activatable adhesive layer, said heat-activatable adhesive layer being positioned between said ink design layer and said support portion, said ink design layer having a top surface opposite said heat-activatable adhesive layer, said top surface being exposed to permit its direct contact with a fabric to be labeled.”

Support for the present amendment to claim 104 may be found in the present specification, for example, on page 25, lines 22-23; on page 26, lines 3-7; on page 27, lines 22-23; and on page 43, lines 13-30. In addition, support for the present amendment to claim 104 may also be found, for example, in Fig. 17.

Claim 104 is patentable over the subject combination of Saiki et al. and Vanmaele for at least the reason that Saiki et al. and Vanmaele, whether taken individually or in combination, do not teach or suggest a heat-transfer label comprising, amongst other things, a support portion and a transfer portion, the transfer portion being positioned over the support portion, the support portion comprising a carrier and a release, the release being positioned over the carrier, the transfer portion comprising an ink design layer and a heat-activatable adhesive layer, the ink design layer being positioned over the heat-activatable adhesive layer, with the heat-activatable adhesive layer being positioned between the ink design layer and the support portion, the ink design layer having a top surface that is exposed to permit its direct contact with a fabric to be labeled.

In particular, the heat-transfer label of Saiki et al. differs from the claimed heat-transfer label for at least the following reasons: First, in Fig. 1 of Saiki et al., there is disclosed a heat-transfer

label 21 consisting of a foundation or carrier 1, a release layer 2 positioned directly over carrier 1, and an ink layer 3 positioned directly over release layer 2. As a result, the heat-transfer label of Fig. 1 of Saiki et al. fails to teach or to suggest, amongst other things, the claimed combination of (i) a support portion comprising a carrier and a release layer and (ii) an adhesive layer positioned over the support portion (and, by implication, positioned over the release layer). In Fig. 2 of Saiki et al., there is disclosed a heat-transfer label 22 consisting of a carrier 1, an ink layer 3 positioned directly over carrier 1, and an adhesive layer 4 positioned directly over ink layer 3. As a result, the heat-transfer label of Fig. 2 of Saiki et al. fails to teach or to suggest, amongst other things, (i) an adhesive layer positioned between the ink layer and the support portion and (ii) an ink layer whose top surface is exposed. In Fig. 3 of Saiki et al., there is disclosed a heat-transfer label 23 consisting of a carrier 1, a release layer 2 positioned directly over carrier 1, an ink layer 3 positioned directly over release layer 2, and an adhesive layer 4 positioned directly over the ink layer 3. As a result, the heat-transfer label of Fig. 3 of Saiki et al. fails to teach or to suggest, amongst other things, (i) an adhesive layer positioned between the ink layer and the support portion and (ii) an ink layer whose top surface is exposed. In Fig. 7 of Saiki et al., there is disclosed a heat-transfer label that is similar to that of Fig. 3 of Saiki et al., except that in Fig. 7 multiple triplets of release layer 2, ink layer 3, and adhesive layer 4 are stacked on top of a carrier. As a result, the heat-transfer label of Fig. 7 of Saiki et al. fails to teach or to suggest, amongst other things, an ink layer whose top surface is exposed to permit its direct contact with a fabric to be labeled.

Vanmaele, which relates to a dye donor element, does not cure the above-noted deficiencies of Saiki et al.

Accordingly, for at least the above reasons, the subject rejection should be withdrawn.

Claims 107-109 stand rejected under 35 U.S.C. 103(a) “as being unpatentable over USPN 5,296,444 to Saiki et al. in view of USPN 5,514,516 to Vanmaele, and further in view of USPN 5,766,397 to Jones.”

Applicants respectfully traverse the subject rejection. Claims 107-109 depend directly or indirectly from claim 104. Claim 104 is patentable over Saiki et al. in view of Vanmaele for at least the reasons given above. Jones fails to cure all of the deficiencies of the combination of Saiki et al. and Vanmaele with respect to claim 104. Therefore, based at least on their respective dependencies from claim 104, claims 107-109 are patentable over the subject combination of Saiki et al., Vanmaele and Jones.

Accordingly, for at least the above reasons, the subject rejection should be withdrawn.

Claim 117 stands rejected under 35 U.S.C. 103(a) “as being unpatentable over USPN 5,296,444 to Saiki et al. in view of USPN 5,514,516 to Vanmaele, and further in view of USPN 5,573,834 to Stahl.”

Applicants respectfully traverse the subject rejection. Claim 117 depends ultimately from claim 104. Claim 104 is patentable over Saiki et al. in view of Vanmaele for at least the reasons given above. Stahl fails to cure all of the deficiencies of the combination of Saiki et al. and Vanmaele with respect to claim 104. Therefore, based at least on its dependency from claim 104, claim 117 is patentable over the subject combination of Saiki et al., Vanmaele and Stahl.

Accordingly, for at least the above reasons, the subject rejection should be withdrawn.

Claims 164-167 stand rejected under 35 U.S.C. 103(a) “as being unpatentable over USPN 5,296,444 to Saiki et al. in view of USPN 5,514,516 to Vanmaele, and further in view of USPN 6,261,734 to Platzer.” In support of the rejection, the Patent Office states the following:

Regarding claims 164-167, Saiki in view of Vanmaele teaches the heat-transfer label of claim 104, but does not disclose that the heat-activatable adhesive layer may have thickness in the ranges of about 10 to 200 microns (claim 164), about 200 microns (claim 165), about 20 to 80 microns (claim 166), and about 80 microns (claim 167).

The disclosure of Platzer is analogous art, because it addresses the technology of thermal transfer printing (column 2, lines 50-67 and column 3, lines 1-39). Although the medium addressed by Platzer (paper) is different, the structure and methods are the same as those discussed by Saiki and Vanmaele. Platzer teaches that when printing, the layer of adhesive should be adjusted to regulate the dot size of the final printed proof image (column 7, lines 57-67).

In light of the above discussion, the exact thickness of the heat-activatable adhesive layer is deemed to be a result effective variable with regard to the dot size, or image resolution of the final printed product. It would require routine experimentation to determine the optimum value of a result effective variable, such as adhesive thickness, in the absence of a showing a criticality in the claimed adhesive thickness (thicker adhesive produces larger dots and lower resolution, while thinner adhesive produces smaller dots and higher resolution). In re Boesch, 205 USPQ 215 (CCPA 1980), In re Woodruff, 16 USPQ2d 1934, 1936 (Fed. Cir. 1990). One of ordinary skill in the art would have been motivated by Platzer to adjust the adhesive thickness in order to produce the desired dot size in the final printed product.

Applicants respectfully traverse the subject rejection. Claim 164, from which claims 165-167 depend, has been amended in this paper and now recites “[a] heat-transfer label suitable for labeling fabric comprising:

(a) a support portion; and

(b) a transfer portion, said transfer portion being positioned over said support portion for transfer of the transfer portion from the support portion to an article of fabric under conditions of heat and pressure, said transfer portion comprising

(i) an ink design layer, said ink design layer comprising a thermochromic ink design; and

(ii) a heat-activatable adhesive layer, said heat-activatable adhesive layer having a thickness of about 10 to 200 microns and having a surface roughness not exceeding about 10 microns;

(iii) wherein said ink design layer is printed directly onto said heat-activatable adhesive layer, said heat-activatable adhesive layer being positioned between said ink design layer and said support portion, said ink design layer having a top surface opposite said heat-activatable adhesive layer, said top surface being exposed to permit its direct contact with a fabric to be labeled.”

Support for the present amendment to claim 164 may be found in the present specification, for example, on page 26, lines 3-7; on page 27,<sup>9</sup> lines 22-23; and on page 43, lines 13-30. In addition, support for the present amendment to claim 164 may also be found, for example, in Fig. 17.

Claim 164 is patentable over the subject combination of references for at least the reason that Saiki et al., Vanmaele and Platzer, whether viewed individually or in combination, do not teach or suggest a heat-transfer label comprising, amongst other things, a support portion and a transfer portion, the transfer portion being positioned over the support portion, the transfer portion comprising a heat-activatable adhesive layer and an ink design layer, the heat-activatable adhesive layer having a thickness of about 10 to 200 microns and a surface roughness not exceeding 10 microns, the ink design layer being positioned over the heat-activatable adhesive layer.

As noted above, Saiki et al. relates to a heat-transfer label. The Patent Office is apparently taking the position that Saiki et al. inherently discloses a surface roughness not exceeding 10 microns because Saiki et al. teaches that the thickness of the adhesive layer is 0.2 to 3 microns and “because the surface roughness of the adhesive layer cannot possibly be greater than the total thickness of the adhesive layer.” In addition, the Patent Office, while apparently acknowledging that Saiki et al. fails to teach an adhesive layer thickness of about 10 to 200 microns, is apparently taking the position that Platzer provides motivation to adjust the thickness of the Saiki adhesive layer. Applicants respectfully disagree with the Patent Office’s line of reasoning. This is at least for the reason that Saiki et al. **explicitly teaches away** from modifying the thickness of its adhesive layer to be outside the range of 0.2 to 3 microns. To wit, Saiki et al. states the following at col. 8, lines 11-20:

The thickness of the adhesive layer is preferably from 0.2 to 3  $\mu\text{m}$ . When the thickness of the adhesive layer is less than the above range, the adhesiveness is poor. **When the thickness is more than the above range, the abrasion resistance of the ink image on the master is poor, the registering between ink dots with different colors when they are superimposed one on another tends to become inaccurate, and the ink image on the master tends to become blurred.** (Emphasis added.)

The considerations alleged by the Patent Office to be disclosed in Platzer to provide motivation to modify the thickness of the adhesive layer, namely, dot size and image resolution of the final printed product are specifically addressed in Saiki et al. and are specifically taught by Saiki et al. to argue against an increase in the thickness of the adhesive layer beyond the 0.2 to 3 micron range disclosed in Saiki et al. Consequently, a person of ordinary skill in the art, taking into account the teachings of Saiki et al., Vanmaele and Platzer, would not have been motivated to increase the thickness of the Saiki adhesive layer to the claimed range.

Accordingly, for at least the above reasons, the subject rejection should be withdrawn.

Claims 168-170 stand rejected under 35 U.S.C. 103(a) “as being unpatentable over USPN 5,296,444 to Saiki et al. in view of USPN 5,514,516 to Vanmaele, and further in view of USPN 5,456,969 to Suzuki et al.”

Applicants respectfully traverse the subject rejection. Claim 168-170 depend directly or indirectly from claim 104. Claim 104 is patentable over Saiki et al. in view of Vanmaele for at least the reasons given above. Suzuki et al. fails to cure all of the deficiencies of the combination of Saiki et al. and Vanmaele with respect to claim 104. Therefore, based at least on their respective dependencies from claim 104, claims 168-170 are patentable over the subject combination of Saiki et al., Vanmaele and Suzuki et al.

Accordingly, for at least the above reasons, the subject rejection should be withdrawn.

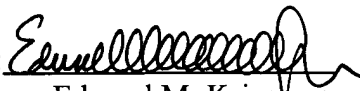
In conclusion, it is respectfully submitted that the present application is now in condition for allowance. Prompt and favorable action is earnestly solicited.

If there are any fees due in connection with the filing of this paper that are not accounted for, the Examiner is authorized to charge the fees to our Deposit Account No. 11-1755. If a fee is

required for an extension of time under 37 C.F.R. 1.136 that is not accounted for already, such an extension of time is requested and the fee should also be charged to our Deposit Account.

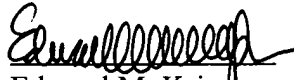
Respectfully submitted,

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I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on February 16, 2010.

  
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